**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.N.KRISHNAN**

**WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929**

**WP(C).No. 7262 of 2007(M)**
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**AGAINST THE ORDER DATED 02/01/2007 IN EP 103/2003 IN OS.101/2001 of SUB COURT, OTTAPPALAM**
**.....**

**PETITIONER:**
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**C.A.UNNIKRISHNAN, AGED 38 YEARS,**
**S/O. APPUGUPTAN, CHEMBANPADATH HOUSE,**
**VAKADAPURAM P.O., PALAKKAD.**

**BY ADV. SRI.A.F.SEBASTIAN**

**RESPONDENTS:**
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**1. THE BRANCH MANAGER,**
**ANDHRA BANK, PALAKKAD.**

**2. ASHOKAN, AGED 43 YEARS,**
**S/O. NARAYANANKUTTY, ARAKIL HOUSE,**
**PERIMPEDARI DESOM, ARAKURSI AMSOM,**
**MANNARKADU TALUK, PALAKKAD DISTRICT.**

**R1 BY ADV. SRI.LAL GEORGE**
**R2 BY SRI.R.LAKSHMI NARAYAN**
**SMT.R.RANJINI**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**APPENDIX**

**EXT. P1** **TRUE COPY OF THE CERTIFIED COPY OF E.A.2/07 ALONG WITH THE ORDER PASSED.**

**EXT.P2** **TRUE COPY OF CERTIFIED COPY OF THE COUNTER STATEMENT FILED BY THE PETITIONER IN EA 2/07.**

**EXT.P3** **TRUE COPY OF THE CERTIFIED COPY OF THE EP FILED BY THE 1ST RT ALONG WITH THE ORDER SHEET.**

**[ True copy ]**

**P.A. to Judge.**

**M.N. KRISHNAN, J.**

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**W.P.C. NO. 7262 OF 2007**

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**Dated this the 6th day of June, 2007.**

**J U D G M E N T**

This writ petition is filed seeking to set aside the order dated 24.1.07 in E.A.2/07 and the order of confirmation of sale dated 24.1.07 in E.P.103/03 passed by the learned Subordinate Judge, Ottappalam. Here, in execution of the decree the property of the judgment debtor was sold in auction and the auction purchaser namely the 2nd respondent purchased the property in auction and deposited 25% of the amount. He did not deposit the balance amount within the statutory period of 15 days. But later moved an application for accepting the belated payment and it was allowed by the court and thereafter sale was confirmed, sale certificate issued and on the basis of the sale certificate the auction purchaser wanted to take delivery of the property. It is at this stage now the matters stand.

2. It is statutory to deposit the amount within the period of 15 days. The first decision on the subject is reported in **Manilal Mohanlal v. Sayed Ahmed (AIR 1954 SC 349)**. It is held therein that when there is no payment of price as required by

rule the sale is wiped out and further held that the inherent powers of the Court cannot be invoked to circumvent the mandatory provisions of the Code and relieve the auction purchasers of their obligation to make the deposit of purchase-money under Order 21 Rule 85. Subsequently, in the decision reported in **Balram v. Illam Singh (AIR 1996 SC 2781)**, the Hon'ble Supreme Court held that when there is a failure to deposit full amount of sale price within the time stipulated by Rule 85 sale becomes a nullity. In the decision reported in **Roa Mahmood Ahmed Khan v. Ranbir Singh (AIR 1995 SC 2195)** also there is a guidance in this regard. This Court in **Kadeeja v. Chandrika (2005 (1) KLT 434)** also held that failure to deposit the balance purchase money within the statutory period of 15 days will result in cancellation of the sale itself. But in that case his Lordship was considering regarding the extension of time in a case where the Court was prevented from accepting money on account of a strike and the Court said when an amount is tendered on the very next day after the strike it will be sufficient payment. But as far as this case is concerned there is no such embargo for the auction purchaser and therefore non-compliance of statutory requirement under Order 21 Rule 85 militates against him and this Court has

to hold that the sale has become a nullity on account of the non-compliance of the statutory requirement. When the sale goes everything which follows namely confirmation of sale, sale certificate etc. goes and no title will vest on the auction purchaser. Therefore, the writ petition is liable to be allowed and I do so and I declare that the sale has become void on account of the non-compliance of Order 21 Rule 85 and at the same time it has to be stated that the auction purchaser had already deposited the amount and it is adjusted by the Bank. There is a duty cast upon the Bank to return the money to the auction purchaser and the Bank may be at liberty to proceed in accordance with law for execution of the decree to realise the amount from the judgment debtor.

The writ petition is disposed of accordingly.

**M.N. KRISHNAN, JUDGE.**

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